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RSPA-04-19702-1

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION**

IN THE MATTER OF:

**ECOLAB Inc.
(Respondent)**

RSPA Case No. 04-117-SB-CE

Issue Date: 02/13/04

Response Date: 04/19/04

COMPROMISE ORDER

I assess Respondent a civil Penalty of \$12,865 for two violations of the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171-180.

I. Summary

Respondent:

ECOLAB Inc.
ECOLAB Services Group
370 Wabash St. North
Saint Paul, MN 55102

ATTN: Mr. Brian H. Davis,
Senior Corporate Counsel

No. of Violations:

2

Total Payment Due:

\$12,865

II. Finding

This matter comes before me after Respondent and the Research and Special Programs Administration (RSPA) agreed to a disposition of this civil enforcement action. I have reviewed the Agreement and I find that the terms as outlined therein are in the best interest of justice. Based on the Compromise Agreement (Agreement), which is

incorporated in its entirety and attached as Addendum A to this Order, I impose a civil penalty of \$\$12,865. Respondent must pay the civil penalty in accordance with the instructions contained in addendum B to this Order.

All of the terms and conditions of the Agreement shall be given the full force and effect of an Order issued pursuant to the Federal hazardous materials transportation law, 49 U.S.C. § 5101, et seq., or the Hazardous Materials Regulations, 49 C.F.R. Parts 171 – 180.

It is so Ordered,

10/29/04
Date

Joel Polomey
for Elaine E. Joost
Chief Counsel
Research and Special Programs Administration

Addendum A



Ecolab Inc.

370 Wabasha Street N.
St. Paul, Minnesota 55102-1390

FAX TRANSMISSION

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IF COPY IS ILLEGIBLE OR INCOMPLETE, PLEASE CONTACT

ANN BERGET @

651/293-2125

Pages 7 (including this page)

DATE: October 21, 2004

TO: Anil Mehta

Fax: 1-202-366-7041

FROM: Brian H. Davis

Phone: 651-293-2586

Fax: 651-293-2573

E-mail: brian.davis@ecolab.com

SUBJECT: URGENT & CONFIDENTIAL!

Mr. Mehta:

Please find attached the Compromise Agreement you are expecting from me. In addition to conveying the document by fax transmission, I am sending you another copy by Certified U.S. Mail.

Thank you,

Brian H. Davis
Senior Corporate Counsel

ab
Attachment

2004 OCT 27 PM 3:46
U.S. POSTAL SERVICE
OFFICE OF CHIEF OF POSTAL SERVICE

CONFIDENTIAL
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This facsimile may contain CONFIDENTIAL INFORMATION, which may also be LEGALLY PRIVILEGED, and which is intended only for the use of the individual or entity named above. If the reader of this facsimile is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, you are hereby on notice that you are in possession of the confidential or privileged information. Any dissemination, distribution or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify the sender by telephone (collect) and return the original facsimile to the sender at the above address via the U.S. Postal Service.

**BEFORE THE
UNITED STATES DEPARTMENT OF TRANSPORTATION
RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION**

IN THE MATTER OF:

**ECOLAB Inc.
(Respondent)**

RSPA Case No.: 04-117-SB-CE

Notice Issued: 4/7/04

Response Received: 5/11/04

COMPROMISE AGREEMENT

I. Parties

The Parties to this Compromise Agreement (Agreement) are:

ECOLAB Inc. (Respondent), a manufacturer and an offeror of hazardous materials for transportation in commerce, located at 370 Wabash St. North in Saint Paul, MN 55102

and

The Research and Special Programs Administration (RSPA), a modal Administration of the United States Department of Transportation.

II. Authority/Jurisdiction

A. The Parties enter into this agreement under authority of 49 U.S.C. § 5123(e) and 49 C.F.R. § 107.327(a)(1).

B. Respondent acknowledges that:

1. It is a regulated entity subject to the Hazardous Materials Regulations (HMR) and to the authority of (a) the Secretary of Transportation, (b) the RSPA's Associate Administrator for Hazardous Materials Safety, and (c) RSPA's Office of the Chief Counsel (49 U.S.C. § 5103(b) and 49 C.F.R. § 107.301) and
2. That it received proper notice of RSPA's action in this proceeding.

III. Background

During a review of the DOT's Incident Reporting Database, in which unintentional releases of hazardous materials are reported to the government by law, RSPA noted that incidents in excess of 1,500 across the country during the last two years were attributable to shipments made by Respondent. Therefore, in July and August of 2003, inspectors from RSPA's Office of Hazardous Materials Enforcement (OHME) conducted a compliance inspection of Respondent's facilities in Joliet, IL, South Beloit, IL, Avenal, NJ, Garland, TX, Hebron, OH, Martinsburg, WV, and San Jose, CA. RSPA conducted these compliance inspections pursuant to the investigative authority under 49 U.S.C. § 5121 and 49 C.F.R. § 107.305. OHME inspectors also conducted an inspection of Respondent's package self-certifying facility in Eagan, MN.

In a compliance inspection of Respondent's Avenal, NJ facility on August 13, 2003, two OHME inspectors observed that non-bulk packagings containing hazardous materials, (1) Organic peroxide type F, liquid (peroxyacetic acid type F, stabilized), 5.2, 8, UN 3109, PG II and (2) Potassium hydroxide solution, 8, UN 1814, PG II did not have the closures of the inner containers facing upward as prescribed in the HMR. Respondent's Avenal facility had received these packages from Respondent's other manufacturing/blending facilities. Respondent's Avenal facility is a distribution facility, reshipping packagings containing hazardous materials from Respondent's other locations.

In a compliance inspection of Respondent's Martinsburg, WV facility on July 21, 2003, an OHME inspector observed that non-bulk packagings containing a hazardous materials, Sodium hydroxide solution, 8, UN 1823, PG II exceeded the package maximum gross mass marked on the packages as certified. Respondent's Martinsburg, WV facility had received these packages from Respondent's Joliet, IL manufacturing/blending facility. Respondent's Martinsburg facility had reshipped packages containing hazardous materials from Respondent's other locations.

At the conclusion of the compliance inspection, two of RSPA's inspectors conducted an "exit briefing" at Respondent's Eagan, MN facility. During the exit briefing, the inspectors provided Respondent with a written document listing all probable violations noted during the inspections and discussed the alleged violations and possible corrective actions with Respondent's representatives. The inspectors expressed an alarm over the high number of these incidents in which packages were found to be leaking hazardous materials during their transportation in commerce.

The exit briefing document listed all possible sanctions that could result from the compliance inspections and directed Respondent to submit timely corrective action. Finally, the exit briefing cautioned that documented corrective action would not eliminate or preclude the initiation of an enforcement action, a finding of violation, or assessment of a penalty although timely corrective actions may mitigate such a penalty.

The inspectors submitted their reports enclosing the compliance inspection results to OHME's Central Region Chief, who reviewed them for accuracy and sufficiency of evidence. Based on that review, the Region Chief referred the matter to RSPA's Office

of the Chief Counsel with a recommendation that it initiate a civil penalty action against Respondent pursuant to 49 C.F.R. § 107.311.

The alleged violations involved are listed in Section V below. Based on the gravity of these violations, the Office of the Chief Counsel issued a Notice of Probable Violation (Notice) to Respondent with a proposed civil penalty in the amount of \$18,375 after a \$5,250 reduction for Respondent's corrective actions, which it had submitted in response to the exit briefing. The proposed civil penalty also included a \$7,875 increase for Respondent's prior violations. RSPA assessed the civil penalty using the Penalty Guidelines found at 49 C.F.R. Part 107, Subpart D, Appendix A, Section II.

IV. Basis of Agreement

A. Corrective Action: Respondent replied to the Notice within the time allowed and requested an informal conference. Subsequently, on June 10 and August 11, 2004, Respondent submitted evidence of additional corrective actions it had taken subsequent to issuance of the Notice. The following is a summary of Respondent's corrective actions:

Violation Number	Respondent's Corrective action
1	<p>Respondent applied for and received an exemption from the HMR regarding its closure configuration. This exemption authorized Respondent to offer for transportation in commerce certain Organic peroxide, Type F, liquid, in specially designed UN 4G combination packages that contained inner packagings with closures not in the upright fashion as required under the HMR. Respondent provided a copy of the exemption in evidence.</p> <p>Respondent also stated that it had experienced a dramatic decrease in the incident rate by redirecting its liquid hazardous material shipments to LTL carriers beginning in November of 2003. Respondent provided a chart documenting its decreasing incident rate.</p>
2	<p>Respondent requalified packages to a higher package gross weight. While in the requalification process for the packages at issue, Respondent undertook a program of reevaluating all of the combination package designs that it manufactured and self-certified for use. Respondent supplied documentation explaining the reevaluation process and the results achieved.</p>

B. Informal Conference: On July 7, 2004, the Office of the Chief Counsel and Respondent held an informal conference. Respondent further explained the corrective actions it had taken.

V. Based on all the evidence at hand, the parties now agree to the compromise penalty amounts listed below:

Viol. No.	HMR Violation	NOPV Penalty Amount	Compromise Penalty Amount
1	Offering for transportation in commerce hazardous materials, (1) Organic peroxide type F, liquid (peroxyacetic acid type F, stabilized), 5.2, 8, UN 3109, PG II and (2) Potassium hydroxide solution, 8, UN 1814, PG II, when the non-bulk packagings containing these materials did not have the closures of the inner containers facing upward, as prescribed by the HMR and, therefore, in unauthorized packagings, in violation of 49 C.F.R. §§ 171.2(a), 172.312(a)(1), 173.22(a)(2), and 173.24a(a)(1).	\$10,500	\$7,350
2	Representing, marking, certifying, and selling remanufactured UN standard 1A2 single packagings (55-gallon open head drums), as in accordance with the HMR, while failing to permanently mark the drums, in violation of 49 C.F.R. §§ 171.2(c), 173.28(d), 178.503(a), and 178.503(d).	\$7,875	\$5,515
TOTAL	-----	\$18,375	\$12,865

VI. Factors Considered in Determining the Civil Penalty

In determining the amount of a civil penalty, RSPA considered the following statutory criteria (49 U.S.C. § 5123(c)):

1. The nature, circumstances, extent, and gravity of the violations;
2. The degree of culpability and history of prior violations;
3. Respondent's size; Respondent's ability to pay the penalty and its ability to continue to do business; and
4. Other matters as justice may require.

Documentation of Respondent's corrective actions for these violations justifies assessing a civil penalty of \$12,865.

VII. Terms and Conditions

A. Respondent does not admit the violations but, in an effort to resolve this matter, agrees to issuance of an Order in the matter.

B. Respondent agrees to pay the sum of \$12,865 within thirty days of receipt of the Final Order to be issued as full satisfaction of the civil penalty proposed in the Notice.

C. By entering into this agreement, Respondent waives:

1. Any right to present further written or oral explanations, information, and arguments in this matter;
2. Any right to Administrative appeal; and
3. Any right to seek judicial review or otherwise contest or challenge the validity of this Agreement or the Notice associated with this case.

D. This Agreement resolves only the violations noted in RSPA Case No. 04-117-SB-CE as referenced in Section V of this agreement. These violations constitute a prior violation under 49 U.S.C. § 5123 if Respondent commits any future violations of the Federal hazardous material transportation law, 49 U.S.C. § 5101 *et seq.*, the HMR, or any exemption, or order issued thereunder.

E. After Respondent returns this signed Agreement, RSPA's representative will present the Agreement to the Chief Counsel with a recommendation that the Chief Counsel adopt the terms of this Agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of this Agreement constitute an offer of compromise until accepted by the Chief Counsel.

F. Respondent must pay the civil penalty in accordance with the terms of this Agreement. Specific payment instructions will appear in the Final Order to be issued. Upon receipt of Respondent's final payment, the Chief Counsel will close this case with prejudice to the Respondent (49 C.F.R. § 107.327(a)(1)(ii)).

VIII. Miscellaneous Provisions

A. By signing this Agreement, Respondent or its representative warrants to have read the agreement and understood its terms and conditions.

B. The individuals signing on behalf of the Respondent and RSPA represent that they are authorized to sign and have authority to enter into this Agreement.

C. Respondent's failure to sign and return this agreement within thirty (30) days from its receipt will result in the withdrawal of this Agreement and the Chief Counsel will issue an Order pursuant to 49 C.F.R. §§ 107.317(d), for the full amount of the penalty proposed in the Notice.

D. Respondent must return the signed Agreement to:

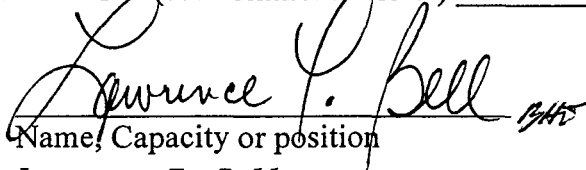
Anil K. Mehta, Attorney
United States Department of Transportation
Research and Special Programs Administration

400 Seventh Street, S.W., Room 8407
Washington, D.C. 20590-0001

Respondent

Federal Tax ID # (see comment below¹) 41-0231510

By:



Date: October 20, 2004

Name, Capacity or position

Lawrence T. Bell
Senior Vice-President,
General Counsel and Secretary

Research and Special Programs Administration

By:



Date: October 16, 2004

Attorney

¹ The Taxpayer Identifying Number is required by 31 U.S.C. § 7701(c)(3). RSPA will use this number for purposes of collecting and reporting on any delinquent amounts arising out of this agreement.

Payment Information

Due date.

Respondent must pay a total civil penalty of \$12,865 within 30 days of the date of this Order.

Payment Method.

Respondent must pay the \$12,865 civil penalty by one of the following: (1) wire transfer, (2) certified check or money order, or (3) credit card via the Internet.

(1) Wire Transfer.

Detailed instructions for sending a wire transfer through the Federal Reserve Communications System (Fedwire) to the account of the U.S. Treasury are contained in the enclosure to this Order. Please direct questions concerning wire transfers to:

AMZ-300
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
Oklahoma City, OK 73125
Telephone (405) 954-8893

(2) Check or Money Order.

Make check or money order payable to "U.S. Department of Transportation" (include the Ref. No. of this case on the check or money order) and send to:

AMZ-300
Federal Aviation Administration
Mike Monroney Aeronautical Center
P.O. Box 25082
Oklahoma City, OK 73125.

(3) Credit Card.

To pay electronically using a credit card, visit the following website address and follow the instructions:

<http://diy.dot.gov/hazmat>

Interest and Administrative Charges.

If Respondent pays the civil penalty by the due date, no interest will be charged. If Respondent does not pay by that date, the FAA's Financial Operations Division will start collection activities and may assess interest, a late-payment penalty, and administrative charges under 31 U.S.C. § 3717, 31 C.F.R. § 901.9, and 49 C.F.R. § 89.23.

The rate of interest is determined under the above authorities. Interest accrues from the date of this Order. A late-payment penalty of six percent (6%) per year applies to any portion of the debt that is more than 90 days past due. The late-payment penalty is calculated from the date Respondent receives the Order.

Treasury Department Collection.

FAA's Financial Operations Division may also refer this debt and associated charges to the U.S. Department of Treasury for collection. The Department of the Treasury may offset these amounts against any payment due Respondent. 31 C.F.R. § 901.3.

Under the Debt Collection Act (see 31 U.S.C. § 3716(a)), a debtor has certain procedural rights prior to an offset. You, as the debtor, have the right to be notified of: (1) the nature and amount of the debt; (2) the agency's intention to collect the debt by offset; (3) the right to inspect and copy the agency records pertaining to the debt; (4) the right to request a review within the agency of the indebtedness and (5) the right to enter into a written agreement with the agency to repay the debt. This Order constitutes written notification of these procedural rights.

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO
RESEARCH AND SPECIAL PROGRAMS,
U.S. DEPARTMENT OF TRANSPORTATION**

1. <u>RECEIVER'S ABA NO.</u> 021030004	2. <u>TYPE SUBTYPE</u> (provided by sending bank)
3. <u>SENDING BANK ARB NO.</u> (provided by sending bank)	4. <u>SENDING BANK REF NO.</u> (provided by sending bank)
5. <u>AMOUNT</u>	6. <u>SENDING BANK NAME</u> (provided by sending bank)
7. <u>RECEIVER NAME:</u> TREAS NYC	8. <u>PRODUCT CODE</u> (Normally CTR, or sending bank)
9. <u>BENEFICIAL (BNF)- AGENCY LOCATION CODE</u> BNF=/AC-69001105	10. <u>REASONS FOR PAYMENT</u> <i>Example: RSPA Payment for Case #/Ticket</i>

INSTRUCTIONS: You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to the Research and Special Programs Administration, Department of Transportation

Block #1 - RECEIVER ABA NO. - "021030004". Ensure the sending bank enters this nine digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

Block #5 - AMOUNT - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point.

EXAMPLE: \$10,000.00

Block #7 - RECEIVER NAME- "TREAS NYC." Ensure the sending bank enters this abbreviation, it must be used for all wire transfer to the Treasury Department.

Block #9 - BENEFICIAL - AGENCY LOCATION CODE - "BNF=/AC-69001105" Ensure the sending bank enters this information. This is the Agency Location Code for Research and Special Programs Administration, Department of Transportation

Block #10 - REASON FOR PAYMENT – "AC-Payment for RSPA Case#/To ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number."

Note: - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer, the General Accounting Division at (405) 954-8893.